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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/639,310	08/14/2000	Jay Paul Drummond	D-1077+18	9530

28995 7590 07/29/2011
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231 SOUTH BROADWAY
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EXAMINER

AKINTOLA, OLABODE

ART UNIT	PAPER NUMBER
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3691

MAIL DATE	DELIVERY MODE
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07/29/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	09/639,310		DRUMMOND ET AL.	
	Examiner		Art Unit	
	OLABODE AKINTOLA		3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,7,11,13,17 and 34-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 34-38 is/are allowed.
- 6) ☒ Claim(s) 1,2,7,13,17 and 39-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner, Dasan, Lawlor, and Simmons.

Re claims 1 and 2: See Board of Patent Appeals and Interferences' (BPAI) decision decided on April 17, 2008 (mailed on April 18, 2008). For reasons advanced by the BPAI, these claims remain rejected.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner, Dasan, Lawlor, and Simmons (*and Patterson*).

Re claim 7: See Board of Patent Appeals and Interferences' (BPAI) decision decided on April 17, 2008 (mailed on April 18, 2008). For reasons advanced by the BPAI, this claim remains rejected.

Examiner inadvertently omitted Patterson in the heading of the office action mailed on 04/06/2011. However, this does not change the fact that rejection of this claim was sustained by the BPAI as articulated in the body of the rejection in the said office action.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner, Dasan, Lawlor, Simmons and Clausing.

Re claim 13: See Board of Patent Appeals and Interferences' (BPAI) decision decided on April 17, 2008 (mailed on April 18, 2008). For reasons advanced by the BPAI, these claims remain rejected.

Claims 17 and 41 rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner, Dasan, Lawlor, Simmons and Patterson.

Re claims 17 and 41: See Board of Patent Appeals and Interferences' (BPAI) decision decided on April 17, 2008 (mailed on April 18, 2008). For reasons advanced by the BPAI, these claims remain rejected.

Examiner notes that the (BPAI) decision decided on April 17, 2008 (mailed on April 18, 2008) sustained the rejection of previously submitted claim 23 (combination of previously submitted

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claims 21 and 2). Since the limitations of previously submitted claim 23 (currently claim 2) are the same as the current claim 17, claim 17 is similarly rejected under the same rationale as claims 13 and 2.

Examiner further notes that even though it appears that the BPAI did not sustain this rejection based on the fact that the claim depends on previous claim 13 which was not sustained, however, the BPAI issued a new ground of rejection for claim 13. As such the allowability of claim 17 based on dependency on claim 13 has been rendered moot by the new ground of rejection. Examiner asserts that this was an inadvertent typographical error. If Examiner were to allow this claim, the reason for allowance cannot be valid based on the new ground of rejection by the BPAI and the affirmation of the rejection of claim 2.

Claims 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner, Dasan, Lawlor, Simmons, Clausing and Patterson.

Re claims 39 and 40: See Board of Patent Appeals and Interferences' (BPAI) decision decided on April 17, 2008 (mailed on April 18, 2008). For reasons advanced by the BPAI, these claims remain rejected (see the rejection of claims 16 and 2).

Allowable Subject Matter

Claims 11 and 34-38 are allowed.

Response to Arguments

Applicant's arguments filed 7/5/2011 have been fully considered but they are not persuasive.

See Examiner's Remarks above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLABODE AKINTOLA whose telephone number is (571)272-3629. The examiner can normally be reached on M-F 8:30AM -5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Olabode Akintola/
Primary Examiner, Art Unit 3691